

**Lee Boon Chong v Lembaga Jurukur Tanah Semenanjung
Malaysia**

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HIGH COURT (KUALA LUMPUR) — ORIGINATING MOTION NO
R1-25-272 OF 2005

B

LAU BEE LAN J

19 JANUARY 2009

*Civil Procedure — Appeal — Procedure — Application to annul or set aside
decision to suspend licensed land surveyor from practice — Proper procedure —
Application by way of originating motion — Whether proper procedure was O 55
r 13 of the Rules of the High Court 1980*

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The appellant/applicant herein was seeking a declaration to annul or set aside the decision of the Land Surveyors Board which had suspended him from practice as a licensed land surveyor for a period of three months. The appellant/applicant's action was premised on s 18 of the Licensed Land Surveyors Act 1958. The respondent raised the issue of whether the appellant/applicant could seek a declaration by way of an originating motion without resorting to judicial review under O 53 of the Rules of the High Court 1980 ('RHC').

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Held, allowing the application:

- (1) On a literal interpretation of s 18, an appeal is intended to be the specific mode of enforcing the remedy. The word 'may' in the phrase 'may within one month of the date of decision, appeal to the High Court against such decision' does not give the applicant a choice of tribunals but merely gives him an option to appeal to the High Court should he desire (see para 4).
- (2) In the present appeal, the respondent was a statutory body pursuant to s 3 of the Act. In this regard, following the reasoning in *R Ramachandran v Koperasi Perumahan Kuala Lumpur* [2001] 2 MLJ 177 the correct procedure was O 55 r 13 of the RHC (see para 6).

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[Bahasa Malaysia summary]

Perayu/pemohon di dalam tindakan ini memohon satu deklarasi untuk membatalkan atau mengetepikan keputusan Lembaga Jurukur Tanah yang

- A telah menggantung amalan beliau sebagai jurukur tanah berlesen untuk tempoh selama tiga bulan. Tindakan perayu/pemohon adalah berdasarkan s 18 Akta Jurukur Tanah Berlesen 1958. Responden telah membangkitkan isu sama ada perayu/pemohon boleh menuntut satu deklarasi menerusi saman pemula tanpa memohon untuk semakan kehakiman di bawah A 53 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT').
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Diputuskan, membenarkan permohonan:

- C (1) Berdasarkan pentafsiran literal s 18, sesuatu rayuan adalah bertujuan sebagai cara khusus untuk melaksanakan remedi. Perkataan 'may' di dalam frasa 'may within one month of the date of decision, appeal to the High Court against such decision' tidak memberikan pemohon pilihan kepada tribunal tetapi hanya memberikannya pilihan untuk merayu kepada Mahkamah Tinggi sekiranya dia berkeinginan (lihat perenggan 4).
- D (2) Di dalam rayuan ini, responden merupakan badan berkanun mengikut s 3 Akta. Berdasarkan alasan yang digunakan di dalam *R Ramachandran v Koperasi Perumahan Kuala Lumpur*, [2001] 2 MLJ 177 prosedur yang betul adalah A 55 k 13 KMT (lihat perenggan 6).]
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Notes

- For a case on procedure, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) para 1370.
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Cases referred to

- Land Executive Committee of Federal Territory v Syarikat Harper Gilfillan Bhd* [1981] 1 MLJ 234, FC (refd)
- G *Metal Industry Employees Union v Registrar of Trade Unions & Ors* [1976] 1 MLJ 80, FC (refd)
- Robert Cheah v Board of Engineers Malaysia* [2005] 4 AMR 80, HC (refd)
- R Ramachandran v Koperasi Perumahan Kuala Lumpur* [2001] 2 MLJ 177, HC (folld)
- H *Wilkinson v Barking Corporation* [1948] 1 All ER 564, SC (refd)
- Yahya Kassim v Kerajaan Malaysia & Anor* [1998] 1 CLJ 43, CA (refd)

Legislation referred to

- I Co-operative Societies Act 1993 s 83(7)
- Licensed Land Surveyors Act 1958 ss 3, 18
- Rules of the High Court 1980 O 53, O 53 r 13

Francis Goh (Francis Goh & Co) for the applicant.
Abu Bakar bin Jais (Hisham Sobri & Kadir) for the respondent.

Lau Bee Lan J:

Re: Preliminary Issue as to the how an appeal under s 18 of the Licensed Land Surveyors Act 1958 (Act 458) ('the Act') ought to be brought

[1] The court has considered the submissions and bundle of authorities of learned counsel for the applicant (whom I am of the view ought to be more appropriately referred to as 'the appellant' for reasons which will become apparent later) (encls 28 and 29 respectively) and that of learned counsel for the respondent (encl 26). The findings of the court are as follows.

[2] The applicant vide the originating motion dated 29 December 2005 (encl 1) seek the following order:

- (i) Keputusan Lembaga Jurukur Tanah Semenanjung Malaysia yang diberikan pada 22 Disember 2005, yang mana telah menggantungkan amalan Lee Boon Chong sebagai jurukur tanah berlesen untuk tempoh selama tiga (3) bulan mulai 1 Januari 2006, diisytiharkan sebagai ultra vires, batal dan tidak sah;
- (ii) Keputusan Lembaga Jurukur Tanah Semenanjung Malaysia yang diberikan pada 22 Disember 2005, yang mana telah menggantungkan Lee Boon Chong sebagai jurukur tanah berlesen untuk tempoh selama tiga (3) bulan mulai 1 Januari 2006, diketepikan secara keseluruhannya;
- (iii) Kos tindakan ini dibayar oleh responden kepada pemohon; dan
- (iv) Apa-apa perintah dan/atau relief selanjutnya yang mahkamah mulia ini fikirkan patut dan suaimanfaat.

[3] It is not disputed between the parties that the applicant's action is premised on s 18 of the Act which provides:

Any person aggrieved by a decision of the Board under section 16(4) or s 17 may, within one month of the date of such decision, appeal to the High Court against such decision and on any such appeal, the High Court may give such directions in the matter as it thinks proper, including any directions as to the costs of the appeal and no appeal shall lie from an order of the High Court under this section.

[4] In my view it is also not disputed that if the applicant is aggrieved against the decision of the respondent the applicant must appeal and on a literal interpretation of s 18 of the Act, an appeal is intended to be the specific mode of enforcing the remedy. The word 'may' in the phrase 'may within one

- A month of the date of decision, appeal to the High Court against such decision' does not in my opinion give the applicant a choice of tribunals but merely gives him an option to appeal to the High Court should he desire (see *Metal Industry Employees Union v Registrar of Trade Unions & Ors* [1976] 1 MLJ 80 at p 81G – H right where the Federal Court cited with approval the case of *Wilkinson v Barking Corporation* [1948] 1 All ER 564 at p 81E–F; *Land Executive Committee of Federal Territory v Syarikat Harper Gilfillan Bhd* [1981] 1 MLJ 234 at p 237D right) (both cited on behalf of the respondent).

- C [5] The only issue is what is the proper procedure to be adopted by the applicant in instituting the appeal. In *R Ramachandran v Koperasi Perumahan Kuala Lumpur* [2001] 2 MLJ 177 (cited on behalf of the applicant) it involved an appeal from the decision of the co-operative tribunal where the applicant was dissatisfied with the decision thereof; and it was provided under s 83(7) of the Co-operative Societies Act 1993 (Act 502) 'Any party aggrieved by the award of a tribunal may appeal therefore to the High Court in accordance with the provision of the rules of court applicable therefore'. One of the issues was what was the correct procedure in filing an appeal from a tribunal's decision to the High Court. At p 181A–E Faiza Thamby Chik J (as he then was) stated:

- E I am of the opinion that the correct procedure in the instant appeal is O 55 r 13 of the RHC. Order 55 r 13(2) of the RHC states that where under any written law an appeal lies from any decision of any person or body or persons to the High Court, such appeal shall be by way of motion and there is no provision requiring leave of the court. In *Sundram v Chew Choo Khoon* [1968] 2 MLJ 40, Chang Ming Tat J held:

- F (1) the procedure for an appeal from a statutory body to the High Court is laid down in O 59 r 13 of the Rules of the Supreme Court. On the construction of the word 'motion' in r 13(1), such an appeal must be lodged by the originating motion for the following reasons: (i) a statutory body, though vested with judicial powers, is not a subordinate court within the meaning of s 3 of the Court Ordinance, 1948. An appeal from the decision of such a statutory body is an origination and not a continuation of the judicial process: (ii) the deliberate use of 'motion' in O 59 r 13(1) in contradistinction to 'notice of motion' in the corresponding English rule — O 59 r 38 established that under O 59 r 13(1) of the local Rules of the Supreme Court, an appeal from a statutory body must be lodged by an originating motion.

- I In *Yong Yoke Sung & Ors v Sungei Way Estate* [1966] 1 MLJ 175 the Federal Court held:

- (1) the appeal to the High Court should in accordance with O 59 r 13 have been brought by way of motion setting out the grounds of

appeal supported affidavit, and if the court so directed at the hearing, by oral evidence, but as leave could have been given in the High Court to amend so that the proceeding court would regard the appeals as properly brought and deal with it on its merit.

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[6] In this present appeal the respondent is a statutory body pursuant to s 3 of the Act. In this regard I adopt the reasoning in *R Ramachandran* and therefore the correct procedure is O 55 r 13 of the Rules of the High Court ('the RHC').

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[7] As a consequence I am of the view that the applicant whom I now refer to as 'the appellant' ought to be given leave to amend the originating motion to reflect the order sought by him and thereafter for the appeal to be heard on the merits. I proposed the originating motion be amended as follows:

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- (1) This appeal made under s 18 of the Licensed Land Surveyors Act 1958 ('the Act') be allowed against the whole decision of the Land Surveyors Board given on 22 December 2005 ordering the appellant be suspended from practice as a licensed land surveyor for a period of three (3) months commencing from 1 January 2006 be set aside or be annulled.
- (2) Cost of the action be paid by the respondent to the appellant; and
- (3) Other orders and/or relief which the court deems fit and reasonable.

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[8] Learned counsel for the respondent raised the issue of whether the applicant can seek a declaration by way of an originating motion without resorting to judicial review under O 53 of the RHC and submitted the applicant cannot do so by citing the cases of *Yahya Kassim v Kerajaan Malaysia & Anor* [1998] 1 CLJ 43 (CA) and *Robert Cheah v Board of Engineers Malaysia* [2005] 4 AMR 80 in support. In the light of the aforesaid order which I have alluded to earlier (at para 7) I am of the view it is a non-issue.

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[9] There is no order as to costs.

Application allowed.

Reported by Ashgar Ali Ali Mohamed

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